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SUPREME COURT OF THE UNITED STATES.

No. 245.

THE UNITED STATES, APP'TS,

vs.

FRANCISCO HERNANDEZ ET AL., HEIRS OF FELIX HERNANDEZ, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

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OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

Be it remembered, that on this the second day of March, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Charles Morse et al., for the place named "La Laguna de las Calabasas," was presented, and ordered to be filed and docketed with No. 769, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *December 16th*, 1853.

In case No. 769, Charles Morse et al., for the place named "La Laguna de las Calabasas," the deposition of Joseph L. Majors, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, was filed.

(Vide page 7 of this Transcript.)

SAN FRANCISCO, *December* 23, 1853.

In the same case, the deposition of Thomas O. Larkin, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, with document No. 1 A. F., annexed thereto, was filed.

(Vide page 9 of this Transcript.)

SAN FRANCISCO, *January 9th*, 1855.

Case No. 769 was ordered to be placed at the foot of the 4th class cases on the trial docket.

SAN FRANCISCO, *March 13th*, 1855.

Case No. 769 was submitted without argument, and taken under advisement.

SAN FRANCISCO, *March 27th*, 1855.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(Vide page 75 of this Transcript.)

And the following order was made, to wit:

(Vide page 78 of this Transcript.)

Petition.

To the Honorable the United States Commissioners to ascertain and settle the Private Land Claims in California:

Charles Morse, Mark Herring and Francis Wright, for themselves as tenants in common, as hereinafter stated, and Robert Cathcart, public administrator of the county of Santa Cruz, and in charge of the estate of Felipe Hernandez, late of said county, deceased, on behalf of the heirs of the said Hernandez, present their respectful petition to your honorable board, and represent that, on the 18th day of May, A. D. 1833, the said Hernandez presented his petition to José Figueroa, then governor of California, for a grant of land near the town of Branciforte, and in what is now the county of Santa Cruz, called "La Laguna de las Calabasas," in extent about one league and three quarters, and that after all necessary and legal steps had been taken in the matter, on the 30th day of December, 1833, the said José Figueroa, governor as aforesaid, made to the said Felipe Hernandez a grant of the said land, declaring it to be property of said Hernandez.

That on the 10th day of May, 1834, the said grant was approved by the commission of colonization, and on the 17th day of May, of the same year, the said grant was approved by the deputation or departmental assembly of California, and that all the conditions of the said grant have been fully complied with by the said Hernandez and his heirs.

And the said Charles Morse, Mark Herring and Francis Wright show that on the 21st of August, 1852, Thomas Higuera and Rosalia Hernandez, his wife, executed to them a deed of all that portion of the said rancho, as one of the heirs of said Felipe Hernandez; that on the same day Manuel Demarent and Concepcion Hernandez, his wife, in like manner made to them a deed of all that portion of the said rancho belonging to the said Concepcion, as one of the heirs of said Hernandez.

And that on the 9th day of September, A. D. 1852, José Augustin Hernandez made to them a deed of that portion of the said rancho belonging to him as an heir of the said Felipe Hernandez.

Whereby they, the said Morse, Herring and Wright, became the owners, as tenants in common, with the remaining heirs of said Felipe Hernandez, of the said tract of land, and the said Robert Cathcart says that he is the public administrator of the county of Santa Cruz, and legally in charge of the estate of the said Felipe Hernandez, deceased, and that he represents the remaining heirs of the said Felipe Hernandez, deceased.

And your petitioners offer to your honorable board the expediente and title to the land, together with all the instruments in

writing herein referred to, together with translations of the same, and pray that they may be taken as part of this petition.

Wherefore your petitioners pray your honorable board to confirm the claim of the petitioners to the said tract of land, and to direct that a patent for the same be issued to them from the proper department of the U. S. government.

(Signed) BROWN, PRATT & TRACY,
For Morse, Herring and Wright.

K. RICHARDSON,
For Robert Cathcart, Public Adm'r Santa Cruz County, in charge of the Estate of Felipe Hernandez.

Filed in office March 2d, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of Joseph L. Majors.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &C.,
San Francisco, December 16th, 1853.

This day, before Com'r Alpheus Felch, came Joseph L. Majors, a witness on behalf of claimants, Charles Morse et al., petition No. 769, and being sworn, deposed as follows:

Questions by Mr. Williams, Attorney for Claimants.

1st question. What are your name, age, and place of residence?

Answer. My name is Joseph L. Majors; my age is forty-seven years, and I reside in Santa Cruz, California.

2d question. Are you acquainted with the land "La Laguna de las Calabasas," commonly called Calabasas, claimed in this case? If so, state when you first knew it, and what you know in regard to its occupation and cultivation at the time by Hernandez, the original grantee.

Answer. I am acquainted with said land. I first knew it on the fifth or sixth day of January, 1835. I staid all night at the place at the time. There were two or three small houses on the place at that time. Hernandez, who is said to be the claimant of the land, lived there at that time, with a family that I supposed to be his. They all lived together. I have known them since, and they all go by the name of Hernandez. He lived there several years after the time above mentioned, and up to about the time of his death. I think he died on the place, but I cannot state positively about it. I should think it was about six years after I was first on the place that his death occurred, but I cannot be certain as to the length of time. When I was first there, there was land near the houses that was fenced in, and appeared to have been cultivated. There was a corral on the place, and there were horses and cattle there.

Questions by Mr. Greenhow, Associate Law Agent.

1st question. Do you know whether or not Hernandez, or his family, continued constantly to occupy this land?

Answer. I cannot say positively about it, but I think they were some time on it and sometimes off it.

2d question. Was the land ever, to your knowledge, entirely abandoned by the Hernandezes?

Answer. I cannot say; the place was fifteen miles from my residence.

(Signed) J. L. MAJORS.

Mr. Greenhow, associate law agent, was present.

Subscribed and sworn to before me this 16th day of December, 1853.

(Signed) ALPHEUS FELCH, *Com'r.*

Filed in office December 16th, 1853.

GEO. FISHER.

Deposition of Thos. O. Larkin.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &c.,
San Francisco, Dec. 23d, 1853.

This day, before Com'r Alpheus Felch, came Thomas O. Larkin, a witness on behalf of claimant, Charles Morse et al., petition No. 769, and being sworn, deposed as follows:

Questions by Mr. Williams, Attorney for the Claimants.

1 question. What are your name, age, and place of residence?

Answer. My name is Thomas O. Larkin; my age is fifty-one years; and I reside in San Francisco, California.

2 question. Are you acquainted with the handwriting of José Figueroa and Augustin V. Zamorano? If yea, look on the document now shown to you, marked Exhibit No. 1, with the initials "A. F.," purporting to be a grant to Felipe Hernandez, and *and* the approval thereof by the departmental assembly, which is annexed to this deposition, and state whether the signature of said persons, where they occur in and upon said document, are their true and genuine signatures.

Answer. I am acquainted with the handwriting of both the persons named in the interrogatories. The signatures referred to are their true and genuine signatures. I have often seen them write.

(Signed) THOMAS O. LARKIN.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but propounded no questions to the witness.

Subscribed and sworn to before me this 23d day of December, 1853.

(Signed) ALPHEUS FELCH,
Commissioner.

Filed in office December 23d, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Deed—Quit-claim.

This indenture, made the 21st day of August, in the year one thousand eight hundred and fifty-two, between Thomas Higuera and Rosita Hernandez, of the county of Santa Clara, and Charles Moss, Mark Herring, and Francis Wright, of the same county, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of four hundred dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath remised, released, and quit-claimed, and by these presents doth remise, release, and quit-claim, unto the said parties of the second part, and to their heirs and assigns, forever, all his right, title, interest, claim, and demand whatever, at law or in equity, and as well in expectancy as in possession, of, in, and to that certain tract of land or rancho lying in the county of Santa Cruz, known as the rancho of La Laguna de las Calabazas, being about one league and one-fourth in length by half a league in breadth, bounded by the rancho of "Las Corralitos" on one side, and on all others by the high hills, meaning hereby to convey the share of said rancho which belongs to said party of the first part, as one of the heirs of the late Felipe Hernandez, the same being now undivided; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

(Signed) THOMAS his ⋈ mark. HIGUERA. [SEAL.]

BASILIA her ⋈ mark. HERNANDEZ. [SEAL.]

Sealed and delivered in presence of—
(Signed) L. E. CARPENTER.

STATE OF CALIFORNIA,
County of San Francisco, ss.

Before me, Frederick P. Tracy, a notary public in and for the county of San Francisco, personally appeared L. E. Carpenter, known to me to be the person whose name is subscribed to the within instrument, as a subscribing witness thereto, who being by me duly sworn according to law, on his oath deposed and acknowledged that he knew Thomas Higuera and Basilia Hernandez, his wife, to be the persons described in and who executed the within conveyance; that he saw them sign and seal the same; that the said Thomas Higuera acknowledged to him that he executed the same freely and voluntarily for the uses and purposes therein mentioned; and that the said Basilia Hernandez, being by him examined separately apart from, and without the hearing of her said husband, acknowledged that she executed the same freely and voluntarily for the purposes therein mentioned, without fear or compulsion of her said husband, and that she did not wish to retract the same, and that he thereupon signed the same as a subscribing witness thereto.

Witness my hand and seal of office this twentieth day September, A. D. 1852.

[SEAL.] (Signed) F. P. TRACY,
Notary Public.

I hereby certify that the foregoing conveyance is recorded in the book of deeds, vol. 1, and pages 433 and 434 of the records of the recorder's office in and for the county of Santa Cruz, and State of California.

October 15th, A. D. 1852.

Attest: PETER TRACY, *Recorder.*
H. F. PARSONS, *Dep'y.*

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this 8th day of July, A. D. 1854, before me, a notary public in and for the said county and State, personally came Thomas Higuera and Basilia Hernandez, his wife, both satisfactorily proven to me (by the oath of Manuel de Mouranter, a good and creditable witness, he having been by me duly sworn thereto) to be the persons described in and who executed the foregoing conveyance, and severally acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein set forth and specified; and the said Basilia Hernandez, wife of the aforesaid Thomas Higuera, having been by me first made duly acquainted with the contents of said conveyance, on an examination separate

from and without the hearing of her said husband, declared to me that she had executed the same free from all fear, threat, menace, compulsion, restraint, or undue influence on the part of her said husband; and further, that she did not wish to retract the execution of the same.

In testimony whereof I have hereto set my hand and affixed my [SEAL.] seal of office, the day and year last aforesaid.

J. ALEXANDER YOELL,
Notary Public.

Filed in office Aug. 16, 1854.
(Signed) GEO. FISHER, *Sec'y.*

[1 S. D. K.]

Jurisdiccion de Branciforte, No. 22.

Año de 1833.

Espediente.

Sobre el terreno nombrado "Laguna de las Colabazas" soticilada para.

Su cultivo y beneficio por

FELIPE HERNANDEZ.

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NOTE.—This esped'te was found in the jusgado of Monterey, on the 14th of July, 1849, amongst the documents of another espediente, respecting a complaint made by the heirs of the late Felipe Hernandez against Hon. José de Amulte, for usurping (as they say) the rancho of "La Laguna de las Calabazas," and deposited on the same day in the archives of the secretary of state's office by W. E. P. Hartnell, gov't translator.

[2 S. D. K.]

Sello Cuarto—Una Cuartilla.

Habilitado provicionalmente por la administracion de la Aduana Maritima de Monterey de la Alta California, para el crenio de mil ochocientos treinta y dos y mil ochocientos treinta y tres.

RAFAEL GONZALES.

FIGUEROA.

S'or Comand'te G'ral y Gefe Sup'r Politico:

Felipe Hernandez, natural de la abarca ó estado de jalisco; ante V. S. con el mas devido respecto y sumision se presenta y dise q'e abiendo venido à este territorio de poblador de la villa de Branciforte, desde el año de 38—en q'e amas sirbio onse años en las armas conq'e creo tener treinta y cuatro años d'ho, en cuya virtud, ocurro á la bien acreditada bondad de V. S. que teniendo siento y tantas

cabesas de ganado mayor, y dos manados que pareces se les han robado los indios como es probable, y quinse ó veinte caballos mansos, como s'or me encuentro sin un terrenito en donde ponerlos p'a su criacion y aumento como tambien donde cultivar p'a sostener, la numerosa familia q'e tengo; hago presente q'e el parage nombrado Laguna de las Calabazas que es tierra valdia, q'e pertenece á d'ha v'lla dist'e sinco leguas, solicità de la bondad de V. S. se digne consederme d'ho sitio q'e tendrà legua y tres cuartos de q'e si soy acreedor presentarè el diseño propio de d'ho sitio.

Espd'te.

MONTEREY, *Mayo* 18, 1833.

De conformidad con las leyes de la materia, informe el ayuntam'to de la villa de Branciforte, si el interesado en esta instancia obtiene los requisitos prevenido para ser atendido en su solicitud, si el terreno que pretende esta comprendido en las 20 leguas limitrofes ó 10 litorales que espresa la ley de 18 de Agosto, de 1824, si ha pertenecido ó pertenece a propiedad particular, corporacion ò pueblo, si se conose por valdio, si la calidad del terreno es de regadio, temporal ó de abrevadero, con todo lo demas que sea consernt'e à ilustrar, la materia.

AUGUSTIN V. ZAMORANO, *S'rio.*

FIGUEROA.

[3 S. D. K.]

P. T. A. V. S., rendidam'te suplico qe. en obsequio de la candidad, algun merito mi numerosa familia y de ayarme sin donde poder poner mis dichos bienes se me conseda d'ho parage de qe. recibia gracia y merced para no sea de malicia, y lo necesaria, &c.

Puerta de Monterey, 18 de Mayo, de 1833.

FELIPE HERNANDEZ. ✕

[S. D. K. 4.]

MONTEREY, *Mayo* 22, *de* 1833.

Agreguese al esped'te y pase todo al alcalde constitucional Dn. Marcelino Escobar, ante quien la parte acreditada que ha servido en la carrera militar en qe. cuerpo y cuanto tiempo; que es de buena conducta, que ha servio en la villa de Branciforte o en algun otro punto de su demarcacion; que tiene familia y el ganado qe. espresa; que el sitio que pretende es valdio que no reconoce dueño alguno, espresando ademas si el terreno es de regadio de temporal o de abrevadero, respondra el papel de su instancia con el del sello qe. corresponde. El S'or Gefe, superior politico de este territorio doi lo mando decreto y firmo de qe. doy fee.

AUGUSTIN V. ZAMORANO, *S'rio.*

JOSE FIGUEROA.

[5 S. D. K.]

[*Here follows map.—See original, page* 26.]

[6 S. D. K.]

En complimiento a la horden de su decreto D. V. 1, fecha 18 de Mallo del pres'te año en qe. me hordena qe. informo el ayuntam'to aesta informe si el interesado obtiene los requistos qe. prebena en la solicitud; para qe. digo a V. S. qe. este individuo es sierto se reconocio por poblador de puro nombre pero no a susestido en esta villa si no fue pura temporada, que no llego a seis meses serbio como espresa en el servico de las armas so li sentio y no se a haber in dadado en esta, el sito qe. solicita demuestra el diseño es hun parage baldio y es'de qe. tiene destinado para hima necessidad, o qe. no no llueba o je queman los pastos como se ha verificado, y se mantiene el ganado o bulles en d'ho sitio que se a ofresido mas de una sola bes lo tiene al mismo tiempo pedido otro poblador de mas merito y se le tiene consedido por mi antedesor, a mas de lo espuesto es hun sitio corto no tiene tierras de regadio ningunas, distante de la villa cuatro leguas y quarto poco menos tiene tierras de temporal pocas de agostaderas mui pocas la sierra inmiadiata ha que tiene tres lagunas y dos birtientes paun qe. escarsos este es lo que se sabe qe. tiene d'ho pretendiente lo qe. informo a V. S. para su natural conocimiento y disposicion.

Dios y libertad. Villa de Branciforte, Mallo 19, de 1833.

1a Juez Superior y politico de la Alta California,

JOSÉ ANT. ROBLES.

[8 S. D. K.]

MONTEREY, *Mayo* 22, *de* 1833.

Agreguese al espedt'e.

FIGUEROA.

[9 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provicionalm'te por la administracion de la aduana maritima de Monterey para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

JOSÉ RAFAEL GONZALES.

FIGUEROA.

Monterey, Junio 4, de 1833.

Notifiquese al interesado en esta instancia presente los testigos que se han de examinar sobre los puntos que comprende el superior

1 decreto de 22 del pp'do que antecede previa la reposicion del papel que le corresponde, asi yo el alcalde lo decreté mandé y firmé con los de assistencia.

MARCELINO ESCOBAR.

De ass'a: JOSÉ MARIA MALDONADO.
De ass'a: JESUS NUÑEZ.

En la f'ha presenté el interesado en esta instancia se le notifico el antecedente ante y entendido repuso el papel de su escrito y dijo: presenta para que sea examinado à Alejandro Rodriguez, Pedro Rodriguez, y José Anesto, y informo pa. no saber, lo hice yo con los de assistencia.

M. ESCOBAR.

De ass'a: JESUS NUÑEZ,
JOSÉ MARIA MALDONADO.

[10 S. D. K.]

En la misma fecha presente Pedro Rodriguez, testigo presentado S'or Felipe Hernandez, le recive juramento en forma de derecho, por el cual ofrecio decir verdad en lo que supiere y fuere presentado y siendolo por su nombre, estado, officio edad patria y religion; llamanse como queda dicho, de estado celibato, q'e es labrador, de edad de veinte y tres años, natural de esta capital, y radicado en el rancho del pafaro y C. A. R.—Preguntado. Bajo el interrogatorio que se demuestra en el superior decreto de 22 del pp'do dijo à lo primero que ha servido en la Carrera Militar, Felipe Hernandez en la compañia de caballeria permanente de este pueblo; pero no save el tiempo que sirvio, que es hombre de bien y trabajadar, que donde ha vivido es en este precidio, sin embargo q'e save por el padre del que declara; que estubo en la villa de Branciforte cuatro ó cinco años de poblador y que solo hace dos años que esta radicada en el rancho de los Corralitos que es demarcacion de la espresada villa; que la familia que le conoce son ocho hijos, hombres y mujeres, y uno es vindo; que es cierto que tiene el numero de ganado q'e espresa en su instancia, q'e el sitio que pretende, no sabe que se conoce dueño alguno, y q'e lo tiene por valdio; que ha oido decir q'e son tierras de la valle, pero que no sabe la verdad; que el espresado terreno es de temporal y abrevadero; que lo dicho es la verdad à cargo del juramento que tiene hecho, en el que se afirmo y ratifico ceda que ce fué esta su declaracion y la firmo conmigo y los de ass'a.

PEDRO RODRIGUEZ.
M. ESCOBAR.

De ass'a: JOSÉ MARIA MALDONADO.
JESUS NUÑEZ.

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Incontinente, presente Alejandro Rodriguez de receivir juram'to en forma de derecho por el cual ofrecio decir verdad en lo que supiere, y fuese preguntado y siendolo por su nombre, Estado.

Sello Tercero—Dos Reales.

Habilitado provicionalm'te por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

JOSÉ RAFAEL GONZALES.

FIGUEROA.

Edad, officio patria y religion, dijo llamanse como dicho esta, es casado de cincuenta y tres años de edad, de oficio labrador, natural de la Mision de S. Luis Obispo, y radicado en esta capital, C. A. R.

[11 S. D. K.]

Preguntados en los mismos terminos q'e lo fue el anterior testigo, dijo que sirvio en la Carrera Militar Felipe Hernandez, de soldado en la compañia de caballeria de este presidio, diez años entrados en once que tiene buena conducta—que hace muchos años que estrebo de poblador en la villa de Branciforte; pero q'e cinco años que tuvo este nombre, no se radico alli pues siempre estaba en diferentes puntos, q'e despues tomo plasa y se mantubo en esta capital y cuando se licencio à los ranchos en donde ha permanecido hasta ahora, dos años q'e se establecio en los Corralitos demarcacion de dicho villa, que sabe tiene siete ù ocho hijos que forman su familia, y q'e es viudo y que es verdad el numero de reces que espresa en su solicitud; que el terreno q'e pretende—no sabe que pertenesca ò reconoce dueño alguno y q'e lo concidera por valdio, que el repetido terreno es de abrevadero; que lo dicho es la verdad à cargo del juramento que tiene hecho en el que se afirmo ratifico leida q'e le fué esta su declaracion y la firmo conmigo y los de assistencia.

Testado presada. Villa en donde permanecio serca de un año. No Vale.

ALEJANDRO RODRIGUEZ.

ESCOBAR.

De ass'a: JOSÉ MARIA MALDONADO.

De ass'a: JESUS NUÑEZ.

[12 S. D. K.]

En veinte de Junio se presento el interesado diciendo no haber podido traer al testigo José Amest'r por inpedirle sus que haceres y presenta para sea ecsaminado á Victor Arroyo y lo rubrique para constancia.

En el puerto de Monterrey, á los veinte dias del mes de Junio, de mil ochocientos treinta y tres, presente el C. José Victor Arroyo le recivi juramenta en forma de derecho p'a el cual ofrecio decir

1 decreto de 22 del pp'do que antecede previa la reposicion del papel que le corresponde, asi yo el alcalde lo decreté mandé y firmé con los de assistencia.

MARCELINO ESCOBAR.

De ass'a: JOSÉ MARIA MALDONADO.
De ass'a: JESUS NUÑEZ.

En la f'ha presenté el interesado en esta instancia se le notifico el antecedente ante y entendido repuso el papel de su escrito y dijo: presenta para que sea examinado à Alejandro Rodriguez, Pedro Rodriguez, y José Anesto, y informo pa. no saber, lo hice yo con los de assistencia.

M. ESCOBAR.

De ass'a: JESUS NUÑEZ,
JOSÉ MARIA MALDONADO.

[10 S. D. K.]

En la misma fecha presente Pedro Rodriguez, testigo presentado S'or Felipe Hernandez, le recive juramento en forma de derecho, por el cual ofrecio decir verdad en lo que supiere y fuere presentado y siendolo por su nombre, estado, officio edad patria y religion; llamanse como queda dicho, de estado celibato, q'e es labrador, de edad de veinte y tres años, natural de esta capital, y radicado en el rancho del pafaro y C. A. R.—Preguntado. Bajo el interrogatorio que se demuestra en el superior decreto de 22 del pp'do dijo à lo primero que ha servido en la Carrera Militar, Felipe Hernandez en la compañia de caballeria permanente de este pueblo; pero no save el tiempo que sirvio, que es hombre de bien y trabajadar, que donde ha vivido es en este precidio, sin embargo q'e save por el padre del que declara; que estubo en la villa de Branciforte cuatro ó cinco años de poblador y que solo hace dos años que esta radicada en el rancho de los Corralitos que es demarcacion de la espresada villa; que la familia que le conoce son ocho hijos, hombres y mujeres, y uno es vindo; que es cierto que tiene el numero de ganado q'e espresa en su instancia, q'e el sitio que pretende, no sabe que se conoce dueño alguno, y q'e lo tiene por valdio; que ha oido decir q'e son tierras de la valle, pero que no sabe la verdad; que el espresado terreno es de temporal y abrevadero; que lo dicho es la verdad à cargo del juramento que tiene hecho, en el que se afirmo y ratifico ceda que ce fué esta su declaracion y la firmo conmigo y los de ass'a.

PEDRO RODRIGUEZ.
M. ESCOBAR.

De ass'a: JOSÉ MARIA MALDONADO.
JESUS NUÑEZ.

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Incontinente, presente Alejandro Rodriguez de receivir juram'to en forma de derecho por el cual ofrecio decir verdad en lo que supiere, y fuese preguntado y siendolo por su nombre, Estado.

Sello Tercero—Dos Reales.

Habilitado provicionalm'te por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

JOSÉ RAFAEL GONZALES.

FIGUEROA.

Edad, officio patria y religion, dijo llamanse como dicho esta, es casado de cincuenta y tres años de edad, de oficio labrador, natural de la Mision de S. Luis Obispo, y radicado en esta capital, C. A. R.

[11 S. D. K.]

Preguntados en los mismos terminos q'e lo fue el anterior testigo, dijo que sirvio en la Carrera Militar Felipe Hernandez, de soldado en la compañia de caballeria de este presidio, diez años entrados en once que tiene buena conducta—que hace muchos años que estrebo de poblador en la villa de Branciforte; pero q'e cinco años que tuvo este nombre, no se radico alli pues siempre estaba en diferentes puntos, q'e despues tomo plasa y se mantubo en esta capital y cuando se licencio à los ranchos en donde ha permanecido hasta ahora, dos años q'e se establecio en los Corralitos demarcacion de dicho villa, que sabe tiene siete ù ocho hijos que forman su familia, y q'e es viudo y que es verdad el numero de reces que espresa en su solicitud; que el terreno q'e pretende—no sabe que pertenesca ò reconoce dueño alguno y q'e lo concidera por valdio, que el repetido terreno es de abrevadero; que lo dicho es la verdad à cargo del juramento que tiene hecho en el que se afirmo ratifico leida q'e le fué esta su declaracion y la firmo conmigo y los de assistencia.

Testado presada. Villa en donde permanecio serca de un año. No Vale.

ALEJANDRO RODRIGUEZ.
ESCOBAR.

De ass'a: JOSÉ MARIA MALDONADO.
De ass'a: JESUS NUÑEZ.

[12 S. D. K.]

En veinte de Junio se presento el interesado diciendo no haber podido traer al testigo José Amest'r por inpedirle sus que haceres y presenta para sea ecsaminado á Victor Arroyo y lo rubrique para constancia.

En el puerto de Monterrey, á los veinte dias del mes de Junio, de mil ochocientos treinta y tres, presente el C. José Victor Arroyo le recivi juramenta en forma de derecho p'a el cual ofrecio decir

verdad, en lo que supiere y fuere preguntado y siendolo por su nombre Estado, officio, edad, patria y religion digo, llamanse como queda dicho, que es soltero de officio labrador, de cuarenta y siete años, natural de esta capital, y C. A. R. preguntado por el mismo interrogatorio qe. lo fueron los dos antecedentes testigos. Dijo.

A lo primero, que Felipe Hernandez sirvio en la Carrera militar en la compañia de caballeria permant'e de esta capital, pero que no save el tiempo que serviria: que tiene buena conducta, y no tiene motivo de creer lo contrario que estuvo de fundador en la villa de Branciforte, pero que no save el tiempo que estuvo radicado en ella; que tiene familia y consiste de ocho hijos y es viudo; que el ganado que espresa en su instancia es efectivo lo que tiene—que el sitio que pretende es valdio y que no sabe que reconoce dueño alguno y que el referido terreno es de temporal y abrevadero; que lo dicho es la verdad á cargo del juramt'o que tiene hecho en el que se afirmo y ratifico, leida que.

[13 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

JOSE RAFAEL GONZALES.

FIGUEROA.

Le fue esta su declaracion, y no firmo por no saber lo y hise yo y los de asst'a.

ESCOBAR.

De ass'a: JOSÉ MARIA MALDONADO,
De ass'a: FRAN'CO PEREZ PACHECO.

MONTEREY, 20 *de Junio, de* 1833.

Concluida la informacion que se mando en el superior decreto de 22 del pp'do en esta y en las dos antecedentes fojas de papel sello tercero; devuelvase esta al s'or gefe superior politico previa la reposicion del papel escrito en el papel qe. corresponde, asi yo el alcalde lo decrete mande, y firme con los de assistencia.

MARCELINO ESCOBAR.

De ass'a: JOSÉ MARIA MALDONADO,
De ass'a: FRAN'CO PEREZ PACHECO.

En ocho sutiles se paso este esped'te al s'or gefe superior politico y para constancia lo rubrique.

[14 S. D. K.]

MONTEREY, *Junio* 21, *de* 1833.

Librese arden al alcalde de Branciforte para que expresa si el terreno nombrado laguna de las Calabazas que ha pretendido Felipe Hernandez pertenece al fondo legal o egidos de la villa; y para que

prevenga ó advierta al poblador que dice en su informe de 19 de Mayo ultimo que lo ha pretendido; compareza en este govierno a deducir sus derechos cuando le conbenga.

FIGUEROA.

MONTEREY, *Dic'e* 17, *de* 1833.

Vista la peticion con q'e da principio este esped'te el informe de la autoridad municipal de la villa de Branciforte las espociones de los testigos con todo lo demas qe. se tuvo presente y va comun de conformidad con lo dispuesto por las leyes y reglamentos de la materia se declara a Felipe Hernandez, dueno en propiedad del terreno conocido con el nombre de la laguna de las Calavasas, colind'te con el rancho de los Coralitos y lomas que lo circunden sin perjuicio del aprovechamiento comun de la villa por lo respectivo a los postas, agua, leña madera, &c., y sugeto a pagar el canon para los fondos de propios si resultase pertenecer a los egidos de la espresada villa y a las demas condiciones qe. se estipulasen; librese el despacho correspond'te tomase razon en el libra respectivo.

[15 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provisionalm'te por la administracion de la aduana maritima de Monterey, para los años de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

JOSÉ RAFAEL GONZALES.

FIGUEROA.

Y dirijise este esped'te para la debida aprovacion de la exma. diputacion territorial en cuyo caso el interesado á q'e se le hara saver este hecreto presentara nuevam'te su titulo para q'e se revalide. El S'or Don José Figueroa, gen'l de brigada com'te gen'l, inspe'or y gefe sup'or politico del territorio de la Alta California, asi lo mando decreto y firmo, de q'e doy fee.

JOSÉ FIGUEROA.

AGUSTIN V. ZAMORANO, *S'rio.*

En 30 de Diciembre habiendo ocurrido à esta secretaria la parte de Felipe Hernandez se le hizo saber el decreto q'e antecede del S'r gefe superior politico del territorio y enterado de el dijo q'e lo oye y queda conforme y p'a la devida constancia hizo una cruz y lo firme.

AUGUSTIN V. ZAMORANO.

[16 S. D. K.]

No. 22.

José Figueroa, General de Brigada de los Ejercitos Mic's Mejicanos, Comand'te General, Inspector y Gefe Superior Politico del Territorio de la Alta California.

Por cuanto Felipe Hernandez, Mejicano p'r nacim'to ha preten-

dido p'a su beneficio personal y el de su familia el terreno conocido con el nombre de la laguna de las Calabazas colind'te con el rancho de los Corralitos y lomas q'e lo circunden; practicadas preormte las diligencias y averiguaciones concern'tes segun lo dispuesto p'r leyes y reglamentos usando de las facultades que me son conferidas en decreto de 1o del corriente á nombre de la nacion Mejicana, he venido en concederle el terreno mencionado declarandole la propiedad de el p'r las pres'tes letras entendiendose d'cha concesion con entera conformidad á lo dispuesto p'r las leyes, y sin perjuicior del aprovecham'to comun de la villa de Branciforte p'r lo respectivo a pastos, aguas, leña maderas, &c., y sugeto a pagar en canon p'a los fondos de proprios si resultase pertenecer a los ejidos de aquella villa; cuando se arreglar sus limites a reserva de la aprovacion ó desaprovacion de la exma. diputacion territorial y sup'mo gobierno y bajo las condiciones sig'tes:

[17 S. D. K.]

1a. Que se sometera a las que estableciere el reglamento q'e se ha de formar p'a lo distribucion de terrenos valdios, y qe. entretanta ni el agraciado nisus herederos podran dividir ni enagenar el q'e se le adjudica imponer senso vinculo franja hipoteca ni otro gravamen aunque sea p'a cuasa piadosa ni pasarlo a manos muertas.

2a. Podra sercarlo sin perjudicar las travecias caminos y servidumbres lo disputara libre y esclusivam'te destinandole al uso o cultivo que mas le acomode pero dentro de un año a lo mas fabricara casa y estara habitada.

3a. Cuande se le conforme la propiedad solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mohoneras algunos arboles frutales ó silvestres de alguna utilidad.

4a. El terreno de q'e se le hace donacion es un cuadrilatero de una y un cuarto de legua de longitud p'r media legua de latitud segun esplica el diseño q'e corre en el esped'te el juez q'e diere p'a posecion lo hara medir conforme a ordenanza p'a señalar los linderos quedando el sobrante que resulte a la nacion para los usos corrientes.

5a. Si contravariere a estas condiciones perdera su derecho y sera denunciable por otro.

[18 S. D. K.]

En consecuencia mando que sirviendole de titulo el presente y teniendose p'r forme y valedero, se tome razon de el libro a q'e corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, a 30 de Diciembre, 1833.

JOSÉ FIGUEROA.

AGUSTIN V. ZAMORANO, *S'rio.*

[19 S. D. K.]

Las comisiones de colonizacion y terrenos valdios á quien se paso el esped'te cuya formacion proboco; p'r pretencion el ciud'no Felipe Hernandez, hiso del paraje nombrado Laguna de las Calabazas, lo han examinado con la circumspeccion q'e corresponde teniendo al mismo tiempo presente la ley de 18 de Agosto, de 1824, sus concordantes y las disposiciones generales q'e en 24 de Noviembre, de 1828, dieto el supremo gobierno de la Union para el mejor cumplimiento de la primera, del escamen del esped'te se ha penetrado la comision de la opinion q'e ya tema de la escrupolosidad y tino con q'e el s'or gefé politico lo mando instruir de suerto q'e ni en su formacion se estrabio algun requisito ni de las practicadas. Por lo dicho conclulle la comision, ofreciendo á la deliberacion de esta ex'ma diputacion la sig'te proposicion.

1o. Se aprueba la concesion hecha al ciudadano Felipe Hernandez, del parage nombrado Laguna de las Calabazas concedido en 30 de D'be de 1833, de entera conformidad con lo prebenido en la ley de 18 de Agosto de 1824, y el art'o 5o del reglamento de 21 de Noviembre, de 1828.

Monterey, Mayo 10, de 1834.

CARLOS ANT. CARRILLO,
JOSÉ CASTRO.

JOSÉ Y. ORTEGA,
JOSÉ A. ESTUDILLO.

[20 S. D. K.]

MONTEREY, *Mayo* 17, *de* 1834.

En sesion de este dia se aprovo por la ex'ma diputacion la proposicion del dictamen anteced'te mandando se devuelva el esped'te al s'or gefé sup'or polit'o para los fines consig'tes.

JUAN. B. ALVARADO,
Sect'o.

JOSÉ FIGUEROA.

[21 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provicionalm'te por la administracion de la aduana maritima de Monterey por las años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALES.

FIGUEROA.

MONTEREY, 2 *de Octubre*, 1834.

En vista de la aprobacion otorgada en 17 de Mayo ultimo, por la ex'ma diputacion territorial; librese testimonio de ella y de este decreto a la parte del ciudadano Felipe Hernandez, en confirmacion de la concesion del terreno de la Laguna de las Calabazas que obtuvo en 17 de Diciembre, del año proximo pasado. El S'or D.

José Figueroa, general de brigada, comand'te general, inspector y gefe superior politico del territorio de la Alta California, asi lo mando decreto, y firmo de que doy feé.

JOSÉ FIGUEROA.

AUGUSTIN V. ZAMORANO, *S'rio.*

[22 S. D. K.]

Testimonio. Se aprueva la concesion echa al ciud'o Felipe Hernandez del parage nombrado laguna de las Calabazas concedido en 30 de Diciembre, de 1833, de entera conformidad con lo prevenido en la ley de 18 de Ag'to, de 1824, y el art'o 5o del reglam'to de 21 de Nov're, de 1828.

MONTEREY, *Mayo* 17, *de* 1834.

En sesion de este dia se aprovo pr. la ex'ma dip'n la proposicion del dictamen anteced'te mandando se devuelva el esped'te al S'r gefé sup'or politico pr. los fines consiguientes.

JOSÉ FIGUEROA.

JUAN B. ALVARADO,
Secretario.

MONTEREY, 2 *de Octubre, de* 1834.

En vista de la aprovacion otorgada en 17 de Mayo ulto pr. la ex'ma diputacion territorial librese testimonio de ella y de este 1 decreto a la parte de ciud'no Felipe Hernandez en confirmacion de la concesion del terreno de la laguna de las Calabazas qe. obtuvo en 17 de Dic'bre, del año pp'do. El S'r D. José Figueroa, general de brigada, comand'te gen'l, inspec'r y gefé politico del territorio de la Alta California, asi lo mando decreto y firmo de qe. doy feé.

JOSÉ FIGUEROA.

AUGUSTIN V. ZAMORANO,
Secretario.

[23 S. D. K.]

Concuerda a la letra con su original del cual hize sacar el presente testimonio pa. resguardo de la parte interesada en Monterey a dos de Octubre de mil ochocientos treinta y cuatro siendo tetigos los ciudadanos Bernardo Navarete y Bonif'o de Madariaga. En testimonio de verdad.

JOSÉ FIGUEROA.

AUGUSTIN V. ZAMORANO,
S'rio.

De orden del ex'mo S'or gobernador se agrega este esped'te al de D. José Amest'r por haber este denunciado el terrreno.

Monterey, 20 de Enero, de 1841.

MANUEL JIMENO.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such, now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify, that the twenty-three preceding and hereunto annexed pages of tracing paper, numbered from one to twenty-three, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, not having a seal of [SEAL.] office, at the city of San Francisco, Cal., this 24th day of March, A. D. 1852.

SAM'L D. KING,
Surveyor Gen'l for Cal.

Filed in office March 2d, 1853.

GEO. FISHER, *Sec'y.*

Exhibit No. 1 *A. F.*

Exhibit No. 1 A. F. annexed to deposition of Thomas O. Larkin, December 23d, 1853.

GEO. FISHER, *Sec'y.*

Titulo del terreno de la laguna de las Calabazas, concedido.

FELIPE HERNANDEZ,
Por DON JOSÉ FIGUEROA.

1833.

Sello Segundo—Doce Reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterrey para las años de mil ochocientos treinta y dos y mil ochocientos treinta y tres.

RAFAEL GONZALES.

FIGUEROA.

José Figueroa, Gen'l de Brigada de los Ejercitos Nacionales Mejicanos, Com'te Gen'l y Jefe Superior Politico de la Alta California.

Por cuanto Felipe Hernandez, Mejicano por nacimiento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de la Laguna de las Calabasas; colindante con el Rancho de los Corralitos y lomas que lo circunden; practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas en decreto del diez del corriente á nombre de la

nacion Mejicana he venido en concederle el terreno mensionado declarandole la propiedad de el por las presentes letras entendiendose dicha concesion con entera conformidad á lo dispuesto por leyes y reglamentos y sin perjuicio del aprovechamiento comun de la villa de Branciforte, por lo respectivo á pastos aguas, leña, madera, &c., y sugeto á pagar un canon para los fondas de propios si resultare pertenecer á los ejidos de aquella villa, cuando se arreglen sus limites, à reserva de la aprobacion o desaprobacian de la ecelentissimo diputacion territorial y del supremo govierno y bajo las condiciones siguientes:

1a. Que se sometera a los que estableciere el reglamento que se ha de formar para la distribucion de terrenos valdios, y que entretanto ni el agraciado ni sus herederos podran dividir ni enagenar el que se les adjustica imponer censo vinculo, firma, hipoteca, ni otro gravamen, aunque sea por causa piadosa ni pasar lo á manos muertas.

2a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode; pero dentro de un año á lo mas fabricara casa y estara habitada.

3a. Cuando se le confiriese la propiedad, solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mohoneras algunos arboles frutales ó silvestres de alguna utilidad.

4a. El terreno de que se le hace donacion es cualetero y una y un cuarto de legua de longitud por el otro legua de latitud, segun esplica el diseño que corre en el espediente. El juez que diere posecion, lo hara medir conforme ó ordenanza para señalar los linderos que dando el sobrante que resulte a la nacion para los usos convenientes.

5a. Si contraveniere á estos condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose p'r firme y valedero se tome razon de el en el libro a que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterrey, a treinta de Diciembre, de mil ochocientos treinta y trss.

AUGUSTIN V. ZAMORANO, *So.*

JOSÉ FIGUEROA.

Queda tomada razon en el libro de asientos de titulos sobre adjudicacion de terrenos, a foras veinte y cuatro numero veinte y dos que obra en el archivo de la secretario de mi cargo.

Monterey, Diciembre treinta, de mil ochocientos treinta y tres.

ZAMORANO.

Sello Tercero—Dos Reales.

Habilitado provisionalmente por la administ'on de la aduana maritima de Monterey para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALES.

FIGUEROA.

Primero. Se aprueba la concession echa al ciudadano Felipe Hernandez del parage nombrado Laguná de las Calavasas, concedido en treinta de Diciembre, de mil ochocientos treinta y tres de entera conformidad con lo prevenido en la ley de diez y ocho de Agosto, de mil ochocientos veinte cuatro, y el articulo quinto del reglament de veinte y uno de Noviembre, de mil ochocientos veinte y ocho.

Monterey, Mayo dies y siete de mil ochocientos treinta y cuatro. En sesion de este dia se aprovo por la ecelentisima diputacion la proposicion del dictamen antecedente mandando se devuelva el espediente al señor gefe superior politico, para los fines consiguientes.

JUAN BAUTISTA ALVARADO,
Secretario.

JOSÉ FIGUEROA.

Monterey, dos de Octubre, de mil ochocientos treinta y cuatro. En vista la aprobacion otorgada en diez y siete de Mayo ultimo, por la ecelentisima diputacion territorial. Librese testimonio de ella y de este decreto a la parte del ciudadano Felipe Hernandez, en confirmacion de la concesion del terreno de la Laguna de las Calavasas que obtuvo en diez y siete de Diciembre, del año proximo pasado. El Señor Don José Figueroa, general de brigada, comandante general, ynspector y gefe superior politico del territorio de la Alta California, asi lo mando, decreto y firmo, de que doy fee.

AGUSTIN VICENTE ZAMORANO.

JOSÉ FIGUEROA.

Concuerda a la letra con su original del cual hize sacar el presente testimonio para resguardo a la parte interesada a veinte de Octubre, de mil ochocientos treinta y cuatro. Siendolo testigos los ciudadanos Bernardo Narvaez y Bonifacio de Madariaga de esta vecinidad.

AGUSTIN V. ZAMORANO, *S'rio.*

JOSÉ FIGUEROA.

Filed in office December 14th, 1853.

GEO. FISHER, *Sec'y.*

Translation of Espediente.

Jurisdiction of Branciforte, No. 22—year of 1833.

Espediente.

Relative to the land called "Laguna de las Calabasas," solicited for its cultivation and for the benefit of—

FELIPE HERNANDEZ.

118.

Note.—This espediente was found in the jusgado of Monterey on the 14th of July, 1849, amongst the documents of another espediente, respecting a complaint made by the heirs of the late Felipe Hernandez against Don José de Aumette, for usurping (as they say) the rancho of "La Laguna de las Calabazas," and deposited on the same day in the archives of the secretary of state's office by—

(Signed) WM. E. P. HARTNELL,
Gov't Translator.

Seal Fourth—One Quartillo.

Provisionally provided by the administration of the maritime custom-house of Monterey, Alta California, for the years of one thousand eight hundred and thirty-two, and one thousand eight hundred and thirty-three.

(Signed) RAFAEL GONZALES.
(Signed) FIGUEROA.

To the Commandant General and Superior Political Chief:

Felipe Hernandez, a native of the county in the State of Jalisco, before your excellency with due respect and submission presents himself and says, that, having come to this territory as a settler from the villa of Branciforte since the year 1838, and, besides, having served eleven years in the army, with which I believe to have thirty-four years, and in virtue thereof I repair to the well known kindness of your excellency, that, having one hundred and odd head of cattle and two flocks, which appears the latter very probably have been stolen by the Indians, and fifteen or twenty tame horses, and, sir, finding myself without any land where to place them for the purpose of breeding and increasing, as also for me to cultivate for the sustenance of a large family, I make known that the place called "Laguna de las Calabazas," which is unsettled land to said villa, five leagues distant from the same, I solicit, through the kindness of your excellency, to condescend to concede unto me said place, which contains about one league and three quarters, of which, should I be accredited, I will present a proper delineation of the place.

And inasmuch I earnestly supplicate your excellency that, in obsequiousness, and for charity, some merit, my numerous family,

and of finding myself without any place to put my said cattle, should you concede unto me said place you will receive grace and mercy.

Swearing it to be without malice, and for the necessary ends, &c.

Port of Monterey, 18th May, 1833.

(Signed) FELIPE HERNANDEZ.

MONTEREY, *May* 18*th*, 1833.

In conformity with the laws in this matter, which inform the ayuntamiento of the villa of Branciforte if the interested party in this instance has obtained the requisites to be attended in his solicitation, if the land he pretends is comprehended in the 20 leagues, limiting or littoral, which is expressed in the law of 18 of August, 1824, if it has belonged to or does belong to any particular property, corporation or town, if it is known as entitled, if the quality of the land is of watering, temporal or irrigated, with all the rest that is convenient to illustrate the matter.

FIGUEROA.

AGUSTIN V. ZAMORANO, *S'rio.*

MONTEREY, *May* 22*d*, 1833.

Annex it to the espediente and pass all to the constitutional alcalde, Dn. Marcelino Escobar, before whom the party will prove that he has served in the military career, in what division, and at what time.

That he bears a good character; that he has lived in the villa of Branciforte, or in any other place of its demarcation; that he has a family and the cattle he has described; that the place he pretends is untilled and no owner appears for it; mentioning, also, whether the land is of irrigation, temporal or suitable for watering cattle; he will replace the paper of its instance with the corresponding seal.

The supreme political chief of this Territory thus commands, decrees, and signs, of which I give faith.

(Signed) AUGUSTIN V. ZAMORANO, *S'rio.*
(Signed) JOSÉ FIGUEROA.

The land solicited, and which is untilled, is the Cañada Ancha, which is in length from north to south one league and a quarter, and in width two quarters; that which it contains is as is in the map, and it lies five leagues distant from the villa.

[*Here follows map.—See original, page* 26.]

In compliance with the order of your decree, dated 18th May of the present year, which orders me to instruct the ayun-

tamiento of this information, if the interested possess the requisites which he pretends in his solicitation.

To which I respond to your excellency, that this individual is verily recognised as a settler, but he has not lived in this villa only but a season, which did not reach six months; he served as an express in the service of the army, and he has not resided here; the place he solicits, and of which he presents a delineation, is a good uncultivated piece of ground, destined for any necessity; or should it not be to his profit to clear it as he has verified, and maintains his cattle or oxen on said place, which he has offered more than once. Another settler, also, of more merit, has solicited it, and it has been conceded unto him by my antecessor. Besides what has been said, it is a short sitio; it does not contain irrigation, and distant from the villa four leagues and a quarter—a little less; it contains temporal land, but little useless land—but very little; there is water in the adjoining land—three lakes and two springs, though weak. This is what is known that said place contains, and the merits which the solicitor is known to possess.

I inform your excellency for your government and disposition. God and liberty.

Villa of Branciforte, May 19th, 1833.

(Signed) JOSÉ ANTO. ROBLES,
Const. Alcalde.

To the SUPERIOR POLITICAL JUDGE
Of Alta California.

MONTEREY, *May* 22*d*, 1833.

Annex to the espediente.

(Signed) FIGUEROA.

Seal Third—Two Reals.

Provisionally provided by the administration of the maritime custom-house of Monterey for the years one thousand eight hundred thirty-three and one thousand eight hundred thirty-four.

(Signed) JOSÉ RAFAEL GONZALES.
(Signed) FIGUEROA.

MONTEREY, *June* 4*th*, 1833.

Let the person interested be notified in this instance to present the witnesses who are to be examined in the points which are comprehended in the superior decree of the 22d of the last month, which antecedents and the replacement of the corresponding paper. I, the alcalde, so decree, order, and sign with those of assistance.

(Signed) MARCELINO ESCOBAR.

As asst.: JESUS NUÑES.
As asst.: JOSÉ MARIA MALDONADO.

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On the present date the interested party in this instance was notified of the foregoing decree, and understanding it, put the proper · , and said that he produced to be examined, Alexander Rodriguez, Peter Rodriguez, and Joseph Amesti, and did not sign his name, not knowing how. I did so with those of assistance.

(Signed) ESCOBAR.

As asst.: JESUS NUÑES.
As asst.: JOSÉ MARIA MALDONADO.

Question.

On the same day Peter Rodriguez appears as a witness, presented by Felipe Hernadez; an oath is admitted unto him in due form, by which he premises to tell the truth of what he knew, and the questions that might be put to him, and being by his name, state, occupation, age, country, and religion, replied: His name is as before mentioned; is a bachelor; is a farmer; his age, twenty and three years; a native of this capital, and radicated in the rancho of Pajaro, and is a Roman Apostolic Catholic. Under the interrogatory which is demonstrated in the superior decree of the 22d of the ultimo, saith:

To the first, that he has served in the military career (Felipe Hernandez) in the company of cavalry permanent in this presidio, but that he has not known how long he served; that he bears a good character, and is a working man; that he lived in this presidio, notwithstanding he has learned from the father, of whom he declares that he was in the villa of Branciforte four or five years as a settler, and that it is only two years that he is radicated in the "Rancho de los Corralitos," which is a demarcation of the aforesaid villa; that the family *the* he is acquainted with are eight children, men and women, and that he is a widower; that the number of cattle he has is one thousand head, as mentioned in his instance; that the place he pretends, he knows no owner to it, and that he considers it as untilled; that he has heard say that they are lands belonging to the villa, but he does not know if it be true; that the aforesaid land is temporal and irrigated; that what is said is the truth in conformity to the oath he has taken, to which he affirms, and ratified after this declaration being read to him; and he signs it, with me and those of assistance.

ESCOBAR.

As asst.: JESUS NUÑEZ.
As asst.: JOSÉ MARIA MALDONADO.

Immediately afterwards Alexander Rodriguez presents himself; and who, being duly sworn, for which he offers to speak the truth of what he knows and may be asked, and being by his name, state, age, occupation, country and religion, said: his name is aforesaid;

that he is married; forty-three years of age; by occupation a tiller of the ground; a native of the mission of San Luis Obispo, and radicated in this capital; and a Roman Catholic, his religion.

Was questioned in the same terms as the antecedent witness, and said that Felipe Hernandez served in the military career, as a private in the cavalry company of this presidio, ten years, going on eleven; that his character is good; that he was many years as a settler in the villa de Branciforte; but that five years that he was such he did not radicate there, as he was always in different places; that he afterwards took a place, and maintained himself in this capital; and after receiving his discharge he went to the rancho, where he has resided, until, within two years since, he established himself in the "Carralitos" demarcation of said villa; that he knows him to have seven or eight children, which compose his family; and that he is a widower; and that it is true the number of cattle he has expressed in his solicitation; that the land he pretends he knows no owner to it, nor it to be recognised by any one, and that he considers it as untilled; that the referred to land is irrigated. That what he has said is the truth, in conformity to the oath that he has taken.

To which he affirms and ratifies; that his declaration being made unto him, which he signs with me and those of assistance.

Tested: Aforesaid villa, where he resided near one year.—Null.

ESCOBAR. ALEJANDRO RODRIQUEZ.

De ass't: JESUS NUÑEZ.
De ass't: JOSÉ MARIA MALDONADO.

On the twentieth of June the interested party presented himself, and said he was unable to bring the witness, José Amesti, on acc't of his business preventing him attending, and presented Victor Arroyo to be examined; and I attest it with my flourish.

(Here is the flourish.)

In the port of Monterey, on the twentieth day of the month of June of 1833, José Victor Arroyo appears, to whom the oath is administered, and who offers to speak the truth of what he knows and should be asked; and being by name, state, occupation, age, country, and religion, said: is named as aforesaid; *the* he is a single man; by occupation a tiller of the ground; forty-seven years old; a native of this capital; and his religion that of Catholic Apostolic Roman.

Question by the same interrogatory as was put to the two antecedent.

Witness replied: First. That Felipe Hernandez served in the military career, in the company of cavalry permanent in this cap-

ital, but that he does not know how long he served; that his conduct is good, and has motive to believe otherwise; that he was a founder in the villa of Branciforte, but that he does not know how long he was radicated in it; that he has a family, and it consists of eight children, and that he is a widower; that the cattle of which he made mention in his instance he actually has them; that the place he pretends is uncultivated, and that no owner is known to it; that the aforesaid land is temporal and irrigated. That what I have *is* spoken is the truth, in accordance to the oath that was administered.

To which he affirms and ratifies, being read—

Sello Third—Two Reals.

Provisionally provided by the administration of the maritime custom-house of Monterey, for the years one thousand eight hundred and thirty-three and one thousand eight hundred and thirty-four.

(Signed) JOSÉ RAFAEL GONZALES.
(Signed) FIGUEROA.

—unto him his declaration, which he did not sign, not knowing how; I did so, and those as assistance.

ESCOBAR.

As asst.: JOSÉ MARIA MALDONADO.
As asst.: FRANC'O PEREZ PACHECO.

MONTEREY, 20*th of June*, 1833.

The information being ended which is ordered in the sup'r decree of 22d ultimo in this and in the two foregoing sheets of paper of the *the* third seal, let this be returned to the supreme political chief, after the replacing of the written paper in the paper to which it corresponds.

I, the alcalde, so decree, command, and sign, with those as assistance.

(Signed) MARCELINO ESCOBAR.
As asst.: JOSÉ MARIA MALDONADO.
As asst.: FRANC'O PEREZ PACHECO.

On eight good sheets this espediente was passed to the supreme political chief; in constancy of which I make my flourish.

(Here is the flourish.)

MONTEREY, *June* 21*st*, 1833.

Despatch an order to the alcalde of Branciforte, requiring him to make known if the land named "Laguna de las Calabazas," which Felipe Hernandez has presented belongs to the legal founded, or to the ejidas (common lands of the villa,) and that he will inform the settler who he says, in his information of the 19th of May last,

pretended it shall appear in the government or office to deduce his rights when convenient to him.

(Signed) FIGUEROA.

MONTEREY, *December* 17, 1833.

In relation to the petition which commences this espediente the information of the municipal authorities of the villa of Branciforte, the exposition of the witnesses and all the rest that was presented, convening in conformity to the requisition of the laws and regulations of the matter, declare Felipe Hernandez lawful owner of the land known by the name of "Laguna de las Calabazas," bordering with the "rancho de los Corralitos," and the hills surrounding it, without prejudice to the common advancement of the villa, as respects the pastures, water, timber, wood, &c., and subject to pay the fee towards the proper fund, should it turn out to belong to the ejidos (common lands) of the aforesaid villa de Branciforte, and to any other condition that may be stipulated unto him, let the corresponding despatch be issued. Note of it be taken in the respective book—

Sello Third—Two Reals.

Provided provisionally, by the administration of the maritime custom-house of Monterey, for the years one thousand eight hundred thirty-three, and one thousand eight hundred and thirty-four.

(Signed) JOSÉ RAFAEL GONZALES.
(Signed) FIGUEROA.

—and direct this espediente for its proper approval by the most excellent territorial deputation, in which case the person interested who is to be made acquainted with this decree must present anew his title, that it may be made revealed. His exc'y D'n José Figueroa, gen'l of brigade, commandant general, inspector and superior political chief of the territory of Alta California, has so commanded, decreed, and signed, of which I give faith.

(Signed) AUGUSTIN V. ZAMORANO, *S'rio.*
(Signed) JOSÉ FIGUEROA.

On 30th of December, having appeared in this secretary's office the party, Felipe Hernandez, the foregoing decree of the supreme political chief of the territory was made known unto him, and understanding it, he said he hears it, and conforms to it, and in constancy of which he makes on the paper the sign of the cross, and I signed it.

(Signed) AGUSTIN V. ZAMORANO.†

No. 22.

José Figueroa, General de Brigada of the National Mexican Forces, Commandant Gen'l Inspector, and Superior Political Chief of the Territory of Alta California.

Whereas Felipe Hernandez, a Mexican by birth, pretended for his personal benefit and that of his family, the land known by the name of "Laguna de las Calabazas," bordering with the rancho of the Corralitos and hills which surround it, the necessary steps previously being taken, and information concerning it, as required by the laws and rules, using the authority in me vested, in the name of the Mexican nation, I have concluded to concede the aforesaid land, declaring it to be his property by these present letters, understanding said concession, with entire conformity with the requisition of the law, and without injury to the villa of Branciforte as respects pastures, water, wood, timber, &c., and subject to pay a fee towards the proper funds should it result, belonging to the (ejidas) common lands of that villa, when its limits are regulated, to the reserve of the approval or disapproval of the excellent territorial government, and under the following conditions:

1. That he will submit to those who may establish rules which are to be made or formed for the distribution of lands uncultivated, and in the meantime nor the grantee, nor his heirs, can divide or alienate that which is adjudicated unto him, impose taxes, entail, give it as security, mortgage, nor any other obligation, even though it be for a pious cause, nor pass it to dead hands.

2d. He may fence it without injury to the crossings, roads, or sewers, enjoy it freely, and exclusively applying it to the use and cultivation he may prefer, but within one year at farthest he must build a house, and it be occupied.

3d. When the property is confirmed unto him he shall solicit of the respective judge that he give him judicial possession in virtue of this decree by which he may mark its boundaries, and in its limits place stakes, some fruit trees, and wild trees of some utility.

4th. The land which is donated is a quadrilateral of one and one-quarter of a league in longitude by half a league in latitude, as is explained in the delineation and runs in the espediente; the judge who may give the possession shall have it measured, in conformity to the ordinance to lay out boundaries, the balance which may remain to be for the nation for its most convenient uses.

5th. If he should contravene these conditions, he shall lose his right to the land, and it may be denounceable by another.

In consideration of which I order, that this serving him as a title, and holding it firm and valid, that a note be taken from the book

which it corresponds, and that it be delivered unto the party interested for his government and further purposes.

Given in Monterey, on the 30th December, 1833.

(Signed) JOSÉ FIGUEROA.
(Signed) AUGUSTIN V. ZAMORANO.

The citizen on colonization and uncultivated lands, to whom was passed the espediente which was formed by pretension of the citizen Felipe Hernandez of the place called Laguna de las Calabazas, they have examined it with the corresponding circumspection, having at the same time present the laws of 18th August, of 1824, its concordances, and the general disposition; that on the 24th of November, 1828, the supreme government of the Union dictated for the better compliment of the first. Of the examination of the espediente the comm'n has penetrated it with that scruple and aptness by which they were instructed by the supreme political chief, so that its formation was not wanting in any requisite or essence of the steps taken.

The comm'n concluded by offering to the deliberation of this exc'lt deputation the following proposition:

1st. They approve of the concession made to the citizen Felipe Hernandez of the place called "Laguna de las Calabazas," conceded on the 30th of December, 1833, in entire conformity with the provisions in the law of 18th August, 1824, and art. 5 of the rule of 21st of November, 1828.

Monterey, May 10th, 1834.

(Signed) CARLOS ANTO. CARMINO.
JOSÉ CASTRO.

(Signed) JOSÉ S. ORTEGA,
JOSÉ ESTUDILLO.

MONTEREY, *May 17th*, 1834.

In session this day the most excellent deputation approved of the proposition in the foregoing suggestion, ordering that the espediente be returned to the supreme political chief for the necessary ends.

(Signed) JOSÉ FIGUEROA.
(Signed) JUAN B. ALVARADO.

Seal Third--Two Reals.

Provided provisionally by the administration of the maritime custom-house of Monterey, for the years one thousand eight hundred and thirty-four, and one thousand eight hundred and thirty-five.

(Signed) RAFAEL GONZALES.
(Signed) FIGUEROA.

MONTEREY, 2*d of October*, 1834.

In accordance to the approbation granted on the 17th of May last, by the excellent territorial deputation, let a testimony of it and of this decree be despatched to the party, citizen Felipe Hernandez, in confirmation of the concession of the land of the Laguna de las Calabazas, which he obtained on the 17th of December of last year. Mr. José Figueroa, general of brigade, commandant, general inspector, and superior political chief of the territory de la Alta California, so commands, decrees, and signed, of which I give faith.

(Signed) JOSÉ FIGUEROA.

(Signed) AUGUSTIN V. ZAMORANO, *S'rio.*

Testimony.

1. The concession made unto the citizen Felipe Hernandez, of the place called "Laguna de las Calabazas," conceded on the 30th of December, 1833, was approved as being in entire conformity with the provisions of the law of the 18th of August, 1824, and the fifth article of the rule of 21st of November, 1828.

MONTEREY, *May 17th*, 1834.

In the session on this day it was approved by the very excellent deputation, the proposition of the foregoing suggestion commanding that the espediente be returned to the superior political chief for the consequent ends.

(Signed) JOSÉ FIGUEROA.

(Signed) JUAN B. ALVARADO, *S'rio.*

MONTEREY, 2*d of October*, 1834.

In accordance with the approbation granted on the 17th May last, by the excellent territorial deputation, a testimony of it and this decree was despatched to the party, the citizen Felipe Hernandez, in confirmation of the concession of the land of the "Laguna de las Calabazas," which he obtained on the 17th of the past year.

El S'or Hon. José Figueroa, general of brigade, commandant, general inspector and superior political chief of the territory of Alta California, thus commanded, decreed, and signed, of which I give faith.

(Signed) JOSÉ FIGUEROA.

(Signed) AGUSTIN V. ZAMORANO, *S'rio.*

It agrees to the letter with the original, of which this testimony I had copied for the government of the party interested.

Monterey, the second of October, one thousand eight hundred and thirty-four, serving as witnesses the citizen Bernardo Navareto and Bonifacio de Madanaga, of this vicinity.

In witness whereof—

(Signed) JOSÉ FIGUEROA.

(Signed) AGUSTIN V. ZAMORANO, *S'rio.*

By order of his excellency the governor this espediente is annexed to that of Don José Amesti, the latter having denounced the land.

Monterey, 20th January, 1841.

(Signed) MANUEL JIMENO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify, that the twenty-three preceding and hereunto annexed pages of tracing paper, numbered from one to twenty-three, inclusive, and each of which is verified by my initials (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of [SEAL.] office,) at the city of San Francisco, California, this 24th day of March, A. D. 1852.

(Signed) SAM'L D. KING,
Surveyor Gen'l Cal'a.

I certify the foregoing pages (preceding the last two) to be correct translations of a document handed to me for the purpose.

San Francisco, February 26th, 1853.

(Signed) J. RALSTON NEILSON,
Spanish Translator, Dr. Robe's Building,
Clay st., near Mont.

Filed in office March 2d, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Deed—Quit-claim.

This indenture, made the twenty-first day of August, in the year one thousand eight hundred and fifty-two, between Concepcion Hernandez Demarente and Manuel Demarente, her husband, of the one part, and Charles Morse, Mark Herring, and Francis Wright, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of four hundred dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim, unto the said parties of the second part, and to their heirs and assigns for-

ever, all the right, title, interest, claim, and demand, whether at law or in equity, and as well in expectancy as in possession, of and to all that certain tract of land or rancho lying in the county of Santa Cruz, known as the rancho of la Laguna de las Calabazas, being about one league and one-fourth in length, by half a league in breadth, bounded by the rancho of los Corralitos on one side, and on all the others by the high hills; meaning hereby to convey the share of said rancho which belongs to the said Concepcion as one of the heirs of the late Felipe Hernandez; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the above mentioned and described premises, together with all the appurtenances, unto the said parties of the second part, their heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) MANUEL his ✕ mark DEMARENTE. [SEAL.]

CONCEPCION her ✕ mark DEMARENTE. [SEAL.]

Sealed and delivered in presence of—
FRANKLIN MORSE.

COUNTY OF SANTA CLARA,
State of California, ss.

On this 27th day of October, A. D. 1852, personally appeared before me Manuel Demarente and Concepcion Demarente, his wife, known to me to be the same described in the within conveyance, who acknowledged to me that they signed and sealed the same freely and voluntarily, and for the uses and purposes therein mentioned. And the said Concepcion being examined *be* me separate and apart from her said husband, acknowledged that she executed the same *with* fear or compulsion or undue influence on the part of her husband.

Given under my hand and private seal, (no official seal having yet been provided,) the day and year first above written. [SEAL.]

(Signed) THOS. VON MERRILL,
Notary Public.

I hereby certify that the foregoing deed or conveyance is recorded in the book of deeds, volume the first, and pages 516 and 517, of the records of the recorder's office in and for the county of Santa Cruz and State of California.

December 1st, 1852.

Attest: PETER TRACY,
Recorder.
By H. F. PARSONS.

Filed in office August 16th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deed.

This indenture, made the ninth day of September, in the year one thousand eight hundred and fifty-two, between Joseph Augustin Hernandez, of the county of Santa Cruz, and Charles Morse, Mark Herring and Francis Wright, of the county of Santa Clara, of the second part, witnesseth: That the said party of the first part, for and in the consideration of the sum of four hundred dollars lawful money of the United States of America, to him in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has released, remised and quit-claimed, and by the presents doth remise, release, and quit-claim unto the said parties of the second part and to their heirs and assigns forever, all his right, title, interest, claim and demand, whether at law or in equity, and as well in expectancy as in possession, of, in, and to all that certain tract of land or rancho, lying the county of Santa Cruz, known as the rancho of La Laguna de las Calabazas, being about one league and one-fourth in length by half a league in breadth, bounded by the rancho of Los Carralitos on one side, and on all others by the high hills; meaning hereby to convey the share of said rancho which belongs to said party of the first part, as one of the heirs of the late Felipe Hernandez, the same being now undivided; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in or on anywise appertaining, and the reversion and reversions and remainder and remainders, rents, issues and profits thereof; and also all the estate, rights, interests, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

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In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written. [SEAL.]

(Signed) JOSÉ AGUSTIN his ⋈ mark HERNANDEZ.

Sealed and delivered in presence of—
L. E. CARPENTER.

I hereby certify that the foregoing deed of conveyance is recorded in the book of Deeds, vol. 1st, and pages 434 and 435, of the records of the recorder's office of the county of Santa Cruz and State of California, Oct. 15, A. D. 1852.

(Signed) PETER TRACY,
Recorder.
By HY. F. PARSONS, *D. C.*

STATE OF CALIFORNIA,
County of San Francisco.

Before me, Frederick P. Tracy, a notary public in and for the county of San Francisco, personally appeared L. E. Carpenter, known to me to be the person whose name is subscribed to the within instrument as a subscribing witness thereto, who being by me duly sworn according to law, deposed and acknowledged that he knew Joseph Agustin Hernandez to be the person described in and who executed the within instrument; that he saw him sign and seal the same, and that he thereupon acknowledged to him that he executed the same freely and voluntarily for the uses and purposes therein mentioned, and that he thereupon subscribed the same as a subscribing witness thereto.

Witness my hand and seal of office the thirtieth day of September, A. D. 1852. [SEAL.]

(Signed) F. P. TRACY,
Notary Public.

Filed in office, August 16, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Pleading in the County Court, Santa Cruz Co.

In the County Court of Santa Cruz county, California.

Among the pleadings and proceedings said court, I find the following, to wit:

January term, A. D. 1852.—In the matter of the Estate of Felipe Hernandez.

And now comes R. Catchcart, and having produced proofs to the satisfaction of the court that notice of his application had been

made according to law, and having produced further proofs of the death of the said Felipe Hernandez, and of his intestacy:

It is ordered by the court that letters of administration be granted to the said Robert Cathcart on the estate of Felipe Hernandez, who died intestate.

STATE OF CALIFORNIA,
County of Santa Cruz.

I, Peter Tracy, clerk of the probate court of the county aforesaid, do certify the foregoing is a true copy of original order made with regard to the above entitled estate, as the same is now of record on the minutes of the said court.

Witness my hand and seal of the court, affixed the 20th day of March, A. D. 1854.
[SEAL.]
(Signed) PETER TRACY, *Clerk.*

Filed in office August 16, 1854.
(Signed) GEO. FISHER.

Opinion.

CHARLES MORSE et al.
vs.
THE UNITED STATES.

For the place called La Laguna de las Calabazas, in Santa Cruz county, containing one and three-fourth leagues of land.

The petitioners allege, that the land in question was granted to Felipe Hernandez, now deceased, by Governor Figueroa, May 18th, 1855. No judicial measurement of this land was had, and no evidence is given of the quantity of the land which is delineated in the map attached to the espediente. The judicial measurement was required by the grant, in order to segregate the land. But waiving all questions relating to the title of Hernandez, the petitioners have failed to give the necessary proofs of title in them, derived from him. Three of the claimants, Morse, Herring and Wright, claim under deeds from Basilia and Concepcion Hernandez, with their husbands, and José Agustin Hernandez, of their respective interests in the rancho as heirs of the original grantee. These deeds of conveyance are presented, but there is no proof tending to show that the grantees were the heirs-at-law of the deceased Felipe Hernandez, or that they had any title to, or interest in the premises. The other petitioner, Robert Cathcart, is described in the petition as the public administrator of the county of Santa Cruz, and in charge of the estate of Felipe Hernandez, deceased, and in that capacity he claims a confirmation of the land. Under the peculiar provisions of the California statute, the administrator has charge of the real estate belonging to the intestate, and we have therefore held him to be a competent party in proceedings

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before this commission. The proof in this case, however, is not sufficient to show that Cathcart was the administrator in the estate of Hernandez. There is no proof tending to establish the allegation that he was the public administrator of the county, as alleged in the petition. The only evidence on the subject connecting him with the administration of the estate is presented in the certified copy from the county court of Santa Cruz, of a brief order that letters of administration be granted to him; the letters of administration are not produced, nor is there any evidence that they were ever issued. The 73d section of the act to regulate the settlement of the estate of deceased persons (laws of California, 385) provides, that every person to whom letters testamentary or of administration shall have been to issue, shall before receiving the letters execute a bond, &c. The 72d section provides that such person shall, before the letters are issued, take the oath or affirmation required of an administrator. The simple order for the issuing of letters of administration does not confer upon the person named in them the legal authority to act in that capacity. He must file a bond, and take his oath after that, before he is entitled to receive the evidence of his authority to act in that capacity, and until this is done he is not de facto or de jure the administrator, and cannot exercise any authority as such. The proof does not show that Cathcart complied with these prerequisites imposed by law, and without which he was not entitled to letters of administration, nor does he show that such letters were ever issued. If they had been, it can scarcely be doubted that he would have produced them here, or at least have presented a transcript from the record of the court, swearing their issuance. The proof not only fails to show his right to act in the capacity claimed, but strongly indicates that such right was never received by him. He cannot therefore be entitled to a decree in that capacity. The decree must be adverse to all the claimants.

Rejected.

Filed in office March 27, 1855.

(Signed) GEO. FISHER, *Sec'y*

Decree.

CHARLES MORSE et al.
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners is not valid, and it is therefore decreed that their application for a confirmation thereof be denied.

(Signed) ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Comm'rs.

Filed in office March 27, 1855.
(Signed) GEO FISHER, *Sec'y.*

Order.

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing seventy-eight pages, numbered from 1 to 78, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 769 on the docket of the said board, wherein Charles Morse et al. are the claimants against the United States, for the place known by the name of "La Laguna de las Calabazas."

In testimony whereof, I hereunto set my hand and affix my private seal, not having a seal of office, at San Francisco, California, this twenty-seventh day of September, A. D. [SEAL.] 1855, and of the independence of the United States of America the eightieth.

GEO. FISHER, *Sec'y.*

Notice of Appeal.

In the United States District Court, southern district of California.

CHARLES MORSE et al., Appellants, vs. THE UNITED STATES, Appellee. } Case No. 293—"Laguna de las Calabazas."—Transcript No. 769.

Appeal from the final decision of the United States board of land commissioners to ascertain and settle the private land claims in California, taken on 4th day of October, 1855, by the said board, having filed with the clerk of the above court a certified transcript of their proceedings and decision, and of the *the* evidence and papers upon which said decision was founded.

Notice is hereby given that the appellants in the above entitled cause, and claimants before said commissioners in a claim for a tract of land called "Laguna de las Calabazas," situate in the

southern district of California, filed before said board on the 2d day of March, 1853, and being numbered on the docket of said board No. 769, will prosecute the appeal herein from the final decision of said board, entered on the 27th day of March, 1855.

SCOTT & BRENT,
Att'ys for Appellants.

Filed February 5th, 1856.

C. E. CARR, *Clerk.*

CHARLES MOSS et al.
vs.
THE UNITED STATES. } No. 293.—Trans. No. 769.

Deposition of José Balcoff, a witness for claimant, taken at the house of witness on acc. of sickness of dept., in the county of Santa Cruz, Cal'a, this 12th day of June, A. D. 1858, before Augustus Roble, justice of the peace of said county, Soquel township, by consent of parties.

Question. What is your name, age, and place of residence?

Ans. José Bolcoff; age sixty-three years; live in Pajaro township.

Ques. Do you know the Hernandez rancho; how long have you known it?

Ans. I do; have known it for twenty-six years.

Ques. What is the boundary line between the Hernandez and the Ameste rancho?

Ans. On the southeast corner of the Hernandez rancho is an oak tree, marked on the Hernandez side; from this oak tree the line extends in a northerly direction, in a straight line to and beyond a redwood tree mark, which tree stands on the north side of the creek, near a bridge. Oak tree spoken of was the starting point when deponent put Hernandez in possession of his rancho.

Cross-examination.

Ques. by P. Ord, U. S. att'y. State your means of information with regard to the boundary lines which you have described.

Ans. I gave Felipe Hernandez possession of this rancho in the year 1834. I was alcalde at the time.

Ques. Who was with you when you gave Hernandez possession of this rancho?

Ans. Francisco Rodriguez, Rafael Robles, Biares Real, Miguel Ramirez.

Ques. Had Felipe Hernandez any children?

Ans. Yes.

Ques. What were their names?

Ans. Francisco, Augustin, and Domingo; also two girls, Concepcion and Juana.

Ques. Are these children now living?

Ans. Yes, the two girls; also Francisco and Augustin.

Ques. By whose authority did you put Hernandez in the possession of this ranch?

Ans. By authority of an order from Gov. Figueroa.

Ques. What was the size of this grant?

Ans. We measured one league from the oak tree north, but could go no farther on account of the brush.

Ques. What creek was this where the redwood tree stood, named as a boundary?

Ans. It was the east branch of the Coralitos.

Ques. Were there any other persons there at the time you gave possession of this rancho, but who were not called as witnesses?

Ans. Yes; Juan José Castro and Ygnacio Castro, and others which I do not now recollect.

Ques. Were Francisco Rodriguez, Rafael Robles, B. Real and M. Ramirez, summoned by you as witnesses, when you put Hernandez in possession of this rancho?

Ans. They were.

(Signed) JOSÉ BALCOFF.

Signed, sealed, and delivered before me, on this the 12th day of June, A. D. 1858.

AUGUSTUS ROBLE,
Justice of the Peace, Santa Cruz County.

Filed June 14, 1858.

C. SIMS, *Clerk.*
Pr. J. H. COLEMAN, *Deputy.*

Petition of Review.

In the United States District Court for the southern district of California, now sitting at Monterey.

CHARLES MOSS et al.
vs.
THE UNITED STATES.

No. 293 in the District Court, and No. 769 in the Land Commission.

The petition of Charles Moss, Mark Herring, and Francis Wright, and Robert Cathcart, public administrator of Santa Cruz county and administrator of the estate of Felipe Hernandez, claimants, as the representatives of the children and heirs of the said Felipe Hernandez, deceased, to this honorable court showeth: that this cause is an appeal from the decision of the United States board of commissioners for the settlement of private land claims in California; that these claimants filed their petition before said board for the confirmation of the grant filed in this case, and which appears in the transcript of the record now on file in this court, which land

lies within the southern district of California, all of which appears more fully by the record and papers on file in this case, of both title papers and proofs, to all of which reference is here made; and they further state to this honorable court, that after the filing the petition, title papers, and proofs in the said board, upon a hearing thereof by the said board, and upon consideration thereof, the said board rejected the same claim, and refused to confirm the same, and filed their decree on the 27th day of March, 1855, rejecting the same, from which these complainants duly appealed therefrom, as the record and papers on file in this case will more fully show.

Your petitioners now state that the said decision was erroneous, for that the same should have been confirmed.

Therefore they pray that this honorable court will review the said opinion of the said board and reverse the same, and declare it null and void, and that this honorable court will confirm the said claim according to the calls of the said grant and the original map or diseño filed herein, and which accompanied the original grant made by Governor Figueroa, as will more fully appear by the records, papers, and proofs on file and given in this court, and whatsoever else may be just and proper in the premises, as in duty they will ever pray.

JOHN WILSON
For Claimants.

Filed this 15th June, A. D. 1858.

C. SIMS, *Clk.*
Pr. J. H. COLEMAN, *Dep.*

FELIPE HERNANDEZ AND HEIRS
vs.
THE U. STATES. } No. 293.

Traced copy of the original diseño filed as part of the record in the above case, and to be copied in as part of the original record filed in the U. S. district court for the southern district.

WILSON & WATSON,
For Claimants.

Filed this 16th June, 1858.

C. SIMS, *Clk.*
Pr. J. H. COLEMAN, *Dep'y.*

United States District Court for the southern district of California.

CHARLES MOSS et al.
vs.
U. STATES.

Case in District Court No. 293.—No. 769 before the Board of Private Land Claims.

Deposition of Ignacio Castro, a witness for the claimants, taken

at the clerk's office, in the city of Monterey, and State of California, on this 15th day of June, 1858.

John Wilson and John H. Watson, attorneys for claimants, present, and Pacificus Ord, district attorney for the United States for the southern district of California, being also present.

The said Ignacio Castro, being duly sworn in the above cause, deposeth to the questions propounded to him as follows:

Question 1st. What is your age and place of residence, as also your name?

Answer. My name is Ignacio Castro; age 41 years; my residence Santa Cruz county, and my occupation ranchero.

Quest. 2d. Were you acquainted with Felipe Hernandez and his family; if yea, how long have you known them; is he living or dead; and if dead, when did he die, and how many children and grandchildren, if any, did he leave, and their names, if you know them?

Ans. 2. I have known Felipe Hernandez since my earliest recollection, and I also know his family; he died about the year 1842, but is not certain as to the exact time; he left at the time of his death nine children as his only heirs; their names were Francisco, a son, Juana, a daughter, Domingo, a son, Ventura, a son, Maria, a daughter, Agustin, a son, Concepcion and Bassa, daughters, and Llano, a son—of these Domingo and Llano have died since their father, without any children, or being married. Ventura has died since his father, leaving three children as his only heirs, who are minors; their names are Francesca, a daughter, Juan, a son, and Beatrice, a daughter. Maria, the daughter of Felipe Hernandez, died since her father's death, leaving one child as her only heir, a daughter. Those of the children of Felipe Hernandez who are now alive are Francesca, Agustin, Juana, Concepcion, and Bassa, and his grandchildren, who heir their parents' estate, have been heretofore given.

3d ques'n. State whether you are acquainted with the rancho called the Laguna de las Calabazas; and if so, who occupied it, and how long was it occupied?

Answer. I am acquainted with the said rancho, and that the same was occupied by Felipe Hernandez and family from about the year 1833 up to the time of his death, which time I have already stated to the best of my recollection, and the same has since been occupied by his family ever since, except for a very short time.

Quest. Did Hernandez have any houses or property of any kind on said ranch when he resided on it; and if so, what was it?

Ans. During his occupancy of said ranch he had houses, horses, cattle, hogs, and raised crops, and especially had he crops of grain on the east side of Corralitos creek.

Quest. Do you know anything about Hernandez getting judicial

possession of his ranch; and if so, who gave it to him, and when was it given, as near as you can recollect?

Ans. I do know of his getting judicial possession thereof; I was present when José Bolcoff, then alcalde of Branciforte, gave it, and I believe it was in the year 1834 or 1835.

Quest. State if you know the eastern line of said rancho, as the same was given him by Bolcoff, when he gave the judicial possession thereof.

Ans. I do know the eastern line of said rancho; the southeast corner of the said ranch, as made by Bolcoff in giving the judicial posession, was at an oak tree standing on the east side of the Corralitos creek, some 300 yards, more or less, from the creek, and about 500 varas southeast of what is known as the Palos Colorados, on the plains, and from that oak tree the line ran about north, passing by a large redwood on the north side of the east fork of the Corralitos creek.

Question. Do you know whether Felipe Hernandez made a will or not, and also if you know whether his children died without making a will—those you have spoken of as dead?

Answer. They all died without making any will, as I believe, and I was well acquainted with them.

his
YGNACIO ⋈ CASTRO.
mark.

Attest:

JOHN H. WATSON.
Also INTERPRETER.

P. Ord examined this deposition and wishes to ask no questions.

Sworn to and subscribed before me, this 15th day of June, A. D. 1858.

C. SIMS, *Cl'k.*
Per J. H. COLEMAN, *Deputy.*

The deposition of Manuel Larios, who being duly sworn, answers as follows:

What is your age; where do you reside; what is your occupation, and what is your name?

Answer. My age is 59; my name is Manuel Larios; residence in Monterey county, and my occupation that of a ranchero.

State if you were acquainted with the rancho de Laguna de las Calabazas, in the county of Santa Cruz; and if so, who occupied the same, and at what time you knew of its occupation, and when it was occupied?

Ans. I do know the said rancho: Felipe Hernandez occupied it as early as about the years 1831, two or three, and continued to

occupy the same till he died, which was about the years 1841 to 1843; as to the particular date of his death, I do not recollect the exact time; he lived on it, raised crops, had horses and cattle.

his
MANUEL ⋈ LARIOS.
mark.

Attest:
JNO. H. WATSON.
Also INTERPRETER.

P. Ord, dist. att'y, present, and desires to ask no questions.

The deposition of Feliciano Soberanious, being duly sworn, deposes and says as follows:

Ques. What is your name, and age, and occupation?

Ans. My name is Feliciano Soberanius; age 69 years; residence Monterey; is a ranchero by occupation.

Ques. Do you know the rancho de las Calabazas, in Santa Cruz county; if so, when did you first know it, and how long did you know it, and who occupied it?

Ans. I first knew it about the year 1837, when I saw it, and Felipe Hernandez and family occupied it, with his horses and cattle, and lived on it, and I have seen him and them on the ranch frequently since.

FELICIANO SOBERANIOUS.

JOHN H. WATSON.
INTERPRETER.

P. Ord, dist. att'y, present, and wishes to ask no questions.

Filed this 16 June, 1858.

C. SIMS, *Cl'k.*
Per J. H. COLEMAN, *Deputy.*

These depositions were taken by consent, and are to be read in evidence in the above case on the hearing.

WILSON & WATSON,
Att'ys for Claimants.
P. ORD, *Dist. Att'y.*

Sworn and subscribed to before me, this 15th June, 1858.

C. SIMS, *Cl'k.*
Per J. H. COLEMAN, *Deputy.*

United States District Court for the southern district of California, now sitting at the city Monterey.

CHA'S MOSS et al., Appellants,
vs.
THE UNITED STATES, Appellees.

John Wilson and John H. Watson come the attorneys for the

claimants in the above case, and move the court here for leave to amend their original petition filed before the board of private land claims, and also their petition of review filed in this court, in the following particulars: To *substite* the names of the following children and grandchildren of Felipe Hernandez, the original grantee of the grant herein prayed to be confirmed as his only heirs-at-law of the said Felipe Hernandez, who is now deceased, for the names of the said Moss, Herring and Cathcart, the original petitioners, who originally filed the complaint, and asked for the confirmation as the representatives of the heirs of the said Hernandez. The following are the names of his said children and grandchildren, his only heirs:

Francisco Hernandez, a son; Juana Hernandez, a daughter; Augustin Hernandez, a son; Concepcion Hernandez, a daughter; Bassa Hernandez, a daughter; Francesca Hernandez, a granddaughter; José Hernandez, a grandson; Josefa Beatrice Hernandez, a granddaughter—the children, and minors, of Ventura Hernandez; and also of Dolores Hernandez, a granddaughter of the said Felipe Hernandez, and child of Maria, the daughter of Felipe Hernandez.

And that the cause proceed, and be placed on the record in the names of these children and grandchildren of the said Felipe Hernandez as his heirs, instead of the names of the said Moss, Herring and Cathcart, the original petitioners in this case, and that Francisco Hernandez be, and he is hereby, appointed guardian ad litem for the minor children of the said Ventura Hernandez above named, and also of the minor child of the said Maria, whose name is Dolores, in this cause; and that the complaint also be so amended as to allege that judicial possession was given *to* the said rancho Calabazas to the said Felipe Hernandez; all of which is assented to by the United States district att'y, P. Ord, and the motion is allowed and the petitions amended as prayed for in this motion.

WILSON & WATSON,
Att'ys for Claimants.

Motion to amend complaint. Filed this 16th June, 1858.
C. SIMS, *Cl'k.*
Pr. J. H. COLEMAN, *Dep'y.*

In the Dist. Court of the U. States for the southern dist. of Cal.

CHAS. Moss et al.
vs.
THE U. STATES. } No. 293.

The answer of P. Ord, att'y of the United States, denies generally the allegations of petitioners; and denies further the validity of alleged grant or title, and prays that the decision of the land

commission against petitioner's claim may be affirmed, and costs and general relief.

P. ORD, *U. S. Att'y.*

Answer of U. States. Filed this 18th June, 1858.
C. SIMS, *Cl'k.*
Pr. J. H. COLEMAN, *Dep'y.*

UNITED STATES OF AMERICA,
Southern District of California, ss.

The President of the United States to P. Ord, U. S. Attorney, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States, in and for the southern district of California, on the 15th day of June, in the year of our Lord one thousand eight hundred and fifty-eight, at the city and county of Monterey, in said district, by Charles Moss et al., praying said court to review the decision of the board of land commissioners of the 27th March, 1855, rejecting their claim to the rancho called "La Laguna de las Calabasas," in the southern district of California, and that you are required to appear at said court in said city within ten days after the service hereof, if served on you within the county of Monterey, and within twenty days if served on you in the counties of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service; and answer said petition, or that judgment by default will be taken against you, and the prayer of the said petitioner will be granted, with costs.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court, this 15th day of June, in the [SEAL.] year of our Lord one thousand eight hundred and fifty-eight, at Monterey aforesaid.

C. SIMS, *Clerk.*
Pr. J. H. COLEMAN, *Dep'y.*

Summons. Filed 10th July, 1858.
C. SIMS, *Clerk.*
Pr. J. H. COLEMAN, *Dep'y.*

Extract from Minutes of Court, Wednesday, 16th June, 1858.

Now, on this day, this cause coming on to be heard; and, after argument of counsel, the same is submitted to, and taken under advisement by, the court.

Extract from Minutes of Court, Thursday, 17th June, 1858.

Decree in favor of claimant was signed this day in open court.

Decree.

United States District Court, for the southern district of California.

FRANCISCO HERNANDEZ et al., Appellants,
vs.
THE UNITED STATES, Appellees. } No. 293.

Transcript of Land Board, No. 769.

This cause coming on to be heard on appeal from the land commissioners to ascertain and settle private land claims in California, upon the transcript of the proceedings and decision of said board, and the documentary and other evidence upon which the said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of the said board of land commissioners, rejecting the claim of the above named appellants, Francisco Hernandez and others, the heirs and legal representatives of Felipe Hernandez, deceased, the original grantee of the land set forth in and described in their petition to the said board of land commissioners, and the documentary and other evidence filed in this cause, and the same is hereby reversed.

And it is further ordered, adjudged, and decreed, that the title of the said Francisco Hernandez and others, the heirs and legal representatives of the said Felipe Hernandez, deceased, the original grantee of the same, is a good and valid one, and that their claim to the said land be, and the same is hereby, confirmed.

The land of which confirmation is hereby made and decreed is known by the name of the Laguna de Calabasas, and is bounded by the ranch of the Corralitos and the surrounding hills, as explained by the grant and map and papers and evidence on file in this case, and is of the extent of one league and quarter in length and half a league in width, and no more.

ISAAC S. H. OGIER,
U. S. Dist. Judge.

Filed 17th June, 1858.

C. SIMS, *Clerk.*
Pr. J. H. COLEMAN, *Dep'y.*

Recorded on page 278.

United States of America, State of California, southern district of California.

I, C. Sims, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing 57 pages, numbered from 1 to 57, both inclusive, to contain a full,